THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

TAT APPLICATION NO. 46 OF 2020

MISC. APPLICATION 58 OF 2022

UGANDA REVENUE AUTHORITY ========== APPLICANT

V

1. **NILE BREWERIES LIMITED**
2. **STANDARD CHARTERED BANK UGANDA LIMITED**
3. **STANBIC BANK UGANDA LIMITED ========== RESPONDENTS**

AND **MISC. APPLCATION 61 OF 2022**

NILE BREWERIES LIMITED ========== APPLICANT

V

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of two applications that were consolidated. The first application was in respect of interpretation of S. 15 of the Tax Appeals Tribunal Act while the second one was in respect of alleged contempt of a tribunal order of 7th March 2022.

The first application, 58 of 2022, was brought under S. 34 of the Tax Appeals Tribunal Act, and Rules 30 and 31 of the Tax Appeals Tribunal (Procedure) Rules that the respondents be held in contempt of the Tax Appeals Tribunal order of 7th March 2022. That the 2nd and 3rd respondents be ordered to pay to the applicant 30% of the amount in the order of 7th March 2022. That the order of 7th March 2022 be vacated for non-compliance by the respondents. That each of the respondents be fined and each pays the Government of Uganda Shs. 500,000 for contempt of the Tribunal order. That the respondents severally

and jointly pay Shs. 200,000,000 in damages for contempt of the Tribunal order. That the respondents pay costs of the application.

The second application, 61 of 2021, was brought under Sections 15, 22 and 23 of the Tax Appeals Tribunal Act and Rules 30 and 31 of the Tax Appeals Tribunal (Procedure) Rules. The application is for orders that having paid the undisputed Value Added Tax (VAT) and Local Excise Duty assessed for the period January 2021 to August 2021 which is greater than the 30% of the taxes assessed in the said period, the applicant has complied with S. 15 of the Tax Appeals Tribunal Act. It is also for orders that the applicant be awarded costs of the application.

The applicant, Uganda Revenue Authority was represented by Mr. George Okello and Mr. Tony Kalungi while the 1st respondent by Mr. Ibrahim Abayo, Mr. Henry Agaba and Mr. Patrick Twesigye, the 2nd respondent by Mr. Joseph Luswata and the 3rd respondent by Mr. Ronald Kalema.

The first application, 58 of 2022 is supported by the affidavit of Mr. Stuart Aheebwa, an advocate in the Legal Services and Board Affairs Department of the applicant. He deponed that the 1st respondent filed TAT Application 46 of 2022 on 23rd February 2022 challenging an additional Local Excise Duty (LED) assessment of Shs. 8,093,439,724 and an additional VAT assessment of Shs. 6,098,292,276 issued against it. On 25th February 2022, the 1st respondent applied for a temporary injunction in Application 24 of 2022 seeking to restrain the applicant from collecting the said taxes. On 7th March 2022, the Tax Appeals Tribunal issued an order restraining the applicant from collecting the said taxes. The Tribunal also ordered the 1st respondent to pay 30% of the tax in dispute or that tax not in dispute, whichever is greater. He deponed that since the issuance of the order the 1st respondent has neglected to pay the 30% of the tax in dispute. As a result, the applicant issued third party notices on the 2nd and 3rd respondents being bankers of the 1st respondent. He deponed further that in contempt of the order, the 2nd and 3rd respondents refused and neglected to attach and remit 30% of the disputed tax to the applicant without any lawful justification. He also deponed that the 1st respondent's advocates. Meritas Advocates wrote to the applicant claiming the Tribunal never required

it to pay 30% of the tax in dispute, and in the alternative, it had been paid. The 2nd respondent in response alleged that the Tribunal stopped recovery of the 30% tax. He contended that as result of the inactions, acts and omissions of the respondents, the applicant and the Government of Uganda have been denied receipt of the 30% tax. He also contended that the respondents be held in contempt of the orders of the Tribunal.

In reply, Ms. Faith Mirembe, the Company Secretary of the 1st respondent, contended that it was not in contempt of the temporary order issued on 7th March 2022. She deponed the 1st respondent had complied with the order. She further deponed that the 1st respondent filed Application 61 of 2022 for the tribunal to interpret S. 15 of the Tax Appeals Tribunal Act. She stated that she verily believed that the additional assessment was not an independent assessment but rather an amended tax assessment. She deponed that the 1st respondent made a self-assessed Local Excise Duty tax of Shs. 109,902,570,432.09 which it paid. The applicant made an additional administrative tax assessment of Shs. 8,150,799,006 in respect of the same tax against the 1st respondent. She also deponed that the 1st respondent made a self-assessed VAT assessment of Shs. 55,298,170,330.46 which has since been paid. She deponed that the applicant issued an additional administrative tax assessment of Shs. 6,105,867,125. She deponed that she has been advised by her lawyers that the additional tax assessments are part and parcel of the tax audited and tax assessed by the applicant within meaning of S. 23 of the Tax Procedure Code Act. She contended that the 1st respondent has paid the greater part of the undisputed tax in accordance with S. 15 of the Tax Appeals Tribunal Act.

Ms. Stella Keshubi of the 2nd respondent contended that it was not party of the court order in application 24 of 2022 between the applicant and the 1st respondent. She deponed that the court order does not direct the 2nd respondent to positively perform any act. She acknowledged that the 2nd respondent only received an agency notice from the applicant.

Ms. Patricia Nabirye a legal officer of Risk and Dispute Management in the legal department of the 3rd respondent deponed that on 19th April 2022 the applicant issued the 3rd respondent a third party agency notice requiring it to pay a total sum of Shs. 4,257,549,600 comprising of VAT and Local Excise Duty. On the same day, the 1st

respondent presented the 3rd respondent with an order of the Tax Appeals Tribunal of 7th March 2022. The 1st respondent requested the 3rd respondent not to honour the third party notice because it has already paid the tax. She deponed that the applicant advised the 3rd respondent to pay the tax who was then faced with two conflicting positions. She was advised by her lawyers that 3rd respondent cannot be held in contempt of the order of the Tribunal. She contended that the order imposed no direct, clear and positive mandate on the 3rd respondent. She also contended that the third party agency notice is not an order of a court or tribunal. The 3rd respondent cannot be blamed for the conflicting position given by the applicant and the 1st respondent. The 3rd respondent was not party to the proceedings from which the order arose. The Tribunal order contained no specific time limit within which any mandate would be carried out.

In Application 61 of 2022, Ms. Faith Mirembe deponed the affidavit. It repeated the same facts and arguments as in application 58 of 2022. The respondent, Uganda Revenue Authority did not file an affidavit in reply.

The applicant submitted that S. 34(d) of the Tax Appeals Tribunal Act, provides that a person who does any act or thing that would, if a tribunal were a court of record, constitute a contempt of that court, commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points or to imprisonment not exceeding six months or to both. The applicant contended that the order contained a clause that the 1st respondent will pay 30% of the due tax in dispute or that tax not in dispute, whichever is greater. The applicant contended that the said order was extracted by the 1st respondent. The 1st respondent did not protest, appeal or apply to set aside the order. The respondent contended that disobedience of a court order is contempt. It cited *Stanbic Bank (U) Ltd & Anor v The Commissioner General* URA, HCMA No. 42 of 2010 where it was stated that a party who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. This position was also stated in *Housing Finance Bank Ltd & Anor v Edward Musisi,* MA No. 158 of 2010 where the Court stated that: “A party who knows of an order, regardless of whether, in the view of that party, the order is null or valid, regular or irregular, cannot be permitted to obey it, by reason of what that party regards the order to be.

The applicant contended that S. 15 of the Tax Appeals Tribunal Act provides that a taxpayer who has lodged a notice of objection to an assessment shall pending final resolution pay 30% of the tax assessed or the part of the tax assessed not in dispute, whichever is greater. The applicant contended that this provision is not applicable to taxes voluntarily paid by the taxpayer but applies to assessments issued by the Uganda Revenue Authority. The applicant contended that the 1st respondent issued additional assessments which had the amounts the latter objected to and were the subject of TAT Application 46 of 2022. The applicant contended that the 1st respondent should pay the 30% of the tax in dispute.

The applicant submitted that the procedure invoked by the 1st respondent in Application 61 of 2022 is strange, irregular, unfounded in law and ought to be dismissed. It is no substitute for an appeal or an application for review or setting aside of clause 2 of the TAT Order. The applicant also submitted that 2nd and 3rd respondents are the bankers of the 1st respondent and have not denied knowledge of existence of the order of 7th March 2022. They received the order and complied with clause 1 by refraining to remit the amounts therein to the applicant.

The applicant also submitted that an ambiguity in a document should be construed against the party who extracted it. It contended that the order was extracted by the 1st respondent. Under the *contra Proferentum* rule it should be interpreted against the 1st respondent who extracted it.

The applicant submitted that it is important that tribunal orders are respected to protect the interest of the public in the due administration of justice. It cited Ssekaana J. in *Attorney General v Male Mabirizi Kiwanuka*, HCMA No. 843 of 2021 where it was stated that contempt of court protects and vindicates the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. It also cited *Stanbic Bank (U) Ltd & Anor v The Commissioner General* URA, HCMA No. 42 of 2010, where the court held that the power to punish in contempt exists not to protect the dignity of the judges but to ensure that justice is done to the public and that the course of

administration of justice is not obstructed. The applicant contended that the respondents selectively complied with clause 1 of the TAT order and ignored clause 2 thereof, in contempt. It contended that compliance with orders of the Tribunal is a matter of sufficient gravity that cannot be taken casually.

In its reply, the 1st respondent submitted that S. 15(1) of the Tax Appeals Tribunal Act provides for two options. The first option is for a party to pay 30% of the tax assessed. The second option provides for payment of the tax assessed which is not in dispute. S. 15(1) requires a tax payer who has filed an objection to comply with either of the options. The 1st respondent submitted that it made a Local Excise Duty self-assessment of Shs. 17,053.016.406. The applicant audited the assessment and came up with an assessment of Shs. 18,277,752,875. The difference between the assessments is Shs. 1,224,736,469. In respect of VAT, the 1st respondent made a self-assessment of Shs. 9,862,436,655. The respondent came up with an assessment of Shs. 10,793,661,908. The difference in the assessments is Shs. 1,224,736,469. The 1st respondent further submitted that it in respect of Local Excise Duty it made a self- assessment of Shs. 109,902,570,432.09 for the fiscal period in question. The applicant made assessment of Shs. 118,053,369,438.87 where there is an additional Shs. 8,150,799,006. In respect of VAT the 1st respondent made self-assessments of Shs. 55,298,170,330. The applicant made an assessment of Shs. 61,404,037,456. The additional amount was Shs. 6,105,867,125. The 1st respondent cited S. 23(1) of the Civil Procedure Code Act which provides that the Commissioner may make an additional assessment amending a tax assessment for the period. The 1st respondent submitted that an additional assessment amends the tax assessment in a tax period. It is not independent of the tax assessment for the period but rather contingent to the tax assessment for the period. The 1st respondent contended that the applicant wishes to disregard the tax not in dispute which it paid which constitutes to about 93.1% of the assessed Local Excise Duty and 90% of the total assessed VAT. It contended that the though the applicant's primary role is to collect taxes, it should not be seen to extort unfair payments.

The 1st respondent refuted that applicant's allegation that it did not comply with the order of the Tribunal. It argued that *contra Proferentum* rule applies to contracts and not court

orders. It stated that it was on record that it complied with payment of the undisputed tax. It argued it should not be penalized for paying the undisputed tax promptly and in time before filing the application. The applicant cited *Jack Erasmus Nsangiranabo v Col Kaka Bagyenda & AG* Misc. Application 671 of 2019 where it was held that for contempt of court to be found there must exist a lawful order, there must be knowledge of the order and there must be failure to comply which is disobedience of the order. The 1st respondent submitted that it did not disobey the order of the Tribunal.

The 2nd respondent submitted that in *Ssempebwa and others v Attorney General* (2019) 1 EA 546 (SC) it was stated that: "In order to prove contempt of court one should prove that an order was issued by court … there was non-compliance with the order by the respondent and non-compliance was wilful or mala fide." The 2nd respondent submitted that the order in issue was one between the applicant and the 1st respondent. The 2nd respondent was not party to the court order. The 2nd respondent submitted that failure to obey an agency notice does not amount to contempt of court. An agency notice is not a court order. The 2nd respondent contended that it was not it to interpret the court order.

The 3rd respondent in reply, submitted that it was informed by the 1st respondent not to honour the third party agency notice because it had honored the Tribunal order. The applicant also informed it to pay. Faced with conflicting positions, the 3rd respondent awaited a clearer position.

The 3rd respondent stated that the application was brought under S. 34 of the Tax Appeals Tribunal Act. It states that any person who commits an office is liable on conviction to a fine not exceeding twenty five currency points or to imprisonment not exceeding six months or to both. The 3rd respondent contended that it creates proceedings of a criminal nature. The 3rd respondent contended that the jurisdiction of the Tribunal is limited to reviewing tax decisions under S. 14 of the Tax Appeals Tribunal Act. The Tribunal has no jurisdiction to hear criminal contempt of court proceeding under S. 34 of the Act.

The 3rd respondent also cited *Ssempebwa and others v Attorney General* (supra) where it stated that the applicant must prove willfulness and mala fides beyond reasonable doubt.

It submitted that it was presented with the Tribunal order after informing the 1st respondent of the agency notice. It stated that it was faced with conflicting positions. It merely acted out of caution. Its conduct cannot be classified as unreasonable or mala fide.

The applicant in rejoinder, submitted that the entire assessments whose amounts were embodied in the order were in dispute. It contended that the 1st respondent has not shown which portion of the assessment was not in dispute. It also submitted that the 1st respondent is attempting to import payments made under self-assessments which are not contentious.

The applicant contended that in *FL Kaderbhai and another v Shamsheral Zaver Virji* SCCA 10 of 2008 the Supreme Court of Uganda applied the *contra proferentum* rule to construe the Settlement Land Act of 1925. The court stated that an ambiguity in a document will be construed against the party who drafted it. The applicant submitted that in *Horne Coupar v Velletta and Company* 2010 BCSC 483 the Supreme Court of Colombia applied the *contra proferentum rule* in interpretation of a court order.

The applicant contended that in respect of willfulness and mala fide, the decision of *Ssempebwa and others v Attorney General* (supra) was distinguishable. It also contended that none of the parties have shown that they attempted to comply with the Tribunal order. The applicant also argued that it trite law that contempt of court orders have been held to amount to civil contempt. The law gives the tribunal summary powers to avoid long drawn criminal process of the law.

The 1st respondent, in rejoinder, submitted that a tax assessment to which a taxpayer may object to include an amount indicated in a self- assessment return. It is inconceivable of the applicant to disregard a tax assessment which excludes a self-assessment. It argued that if the legislature intended for an additional assessment to be regarded as an assessment independent of a tax assessment the word amending would have been omitted.

Having read the pleadings and submissions of the parties, this is the ruling of the Tribunal.

The parties consolidated Misc. Applications 58 and 61 of 2022. Application 58 of 2022 dealt with contempt of court while Application 61 of 2022 dealt with interpretation of S. 15 of the Tax Appeals Tribunal Act. Before the Tribunal can deal with contempt of court it has to deal with whether the applicant's interpretation of the order was justified. This may have a bearing as to whether it was in contempt of the Tribunal order of 7th March 2022 arising in Misc. Application 46 of 2022.

Misc. Application 61 of 2022 was brought under Sections 15 and 22 of the Tax Appeals Tribunal Act. The applicant stated the said application was arising out of Misc. Application 58 of 2022. S. 15 of the Act provides for payment of 30% of the Tax in dispute or that which is not in dispute or whichever is greater. S. 22 of the Tax Appeals Tribunal Act deals with procedure of the Tribunal during hearing. S. 14 of the Tax Appeals Tribunal Act states that any party who is aggrieved by a decision made under a taxing Act may apply to the Tribunal for a review. The tribunal does not see a decision under a taxing Act that warranted the applicant to file a separate application. The grounds in Misc. Application 61 are the grounds that the applicant ought to raise and were raised in Misc. Application 58 of 2022. The Tribunal does not think it is necessary that whenever a party seeks to raise arguments in an application it has to file a fresh application. That is an abuse of court process as it would entail a court making two instead one decision. It is also misconceived as the Sections the applicant cited do not enable it file a separate application. They deal with payment of 30% and procedure in the Tribunal. Therefore Misc. Application 61 of 2022 is struck off with costs to the respondent.

However as already noted, the grounds stated in Misc. Application 61 were addressed in Misc. Application 58 of 2022, the Tribunal still has to address them. The applicant contended that it did not disobey any court order as it paid the tax assessed which was not in dispute and it was greater than the 30%. Therefore it is pertinent for the Tribunal to address the application of S. 15 of the Tax Appeals Tribunal Act before looking at contempt of the Tribunal order.

S. 15 of the Tax Appeals Act deals with the deposit of portion of tax pending determination of objection. S. 15(1) reads:

> "(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The 1st respondent extracted an order which read: "The applicant will pay the 30% of the due tax in dispute or that tax not in dispute whichever is greater." A reading of the extract shows that the applicant should pay 30% of the due tax in dispute. Was the order in line with S. 15 of the Tax Appeals Tribunal Act?

In *Cape Brandy Syndicate v IRC (1921) K.B 64* it was stated that "In a taxing Act, one has merely to look at what is clearly said…" S. 15 of the Tax Appeals Tribunal Act states that a taxpayer who lodges an objection to an assessment shall pending final resolution of the objection pay 30% of the tax assessed or that part not in dispute whichever is greater. A causal understanding of the Act is "the tax assessed" should be the one the applicant objected to in the assessment and or what was decided in the objection decision. In *Sussex Peerage* (1844) 8 ER at 1057, it was held that

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law giver but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of colleting the intention to call in aid the grounds and cause enacting the statute and to have recourse to the preamble which according to Dire CJ is 'a key to open the minds of the makers of the Act and the mischiefs they intend to redress."

The words in S. 15 of the Tax Appeals Tribunal Act are clear and unambiguous. If the Tribunal were to state that the Act was ambiguous, a look at the preamble of the Act shows that the Tribunal was established in pursuant of the Article 152 of the Constitution. Article 152 of the Constitution states Parliament shall establish tax tribunals for the purpose of settling tax disputes. This means that the tribunal should concern itself with the tax in dispute and not that which is not in dispute. Furthermore, S. 15 should be given a purposive interpretation so as not to defeat the intention of the legislature. If a matter is filed before the tribunal one should by looking at the pleadings know what tax and the amount that is in dispute. One cannot determine by looking at an application, what the

self- assessed tax was, or what has been paid by the taxpayer as it is not part of the pleadings. To do so may at times require a long process of reconciliation of accounts which would defeat the aim the Tribunal was set up to dispose disputes expeditiously. The intention of the legislature was that the tax payer should pay 30% of the tax in dispute, or that amount not in dispute, whichever is greater. If after an objection the parties agree on an amount which then is not in dispute and the applicant pays that amount and that amount is greater than the 30%, it would have complied with S. 15 of the Tax Appeals Tribunal Act.

The 1st respondent contended that the Tax Appeals Tribunal Act should be read in light of S. 23 of the Tax Procedure Code Act. The Tax Appeals Tribunal Act was enacted in 1998. It commenced 1st August 1998. The Tax Procedure Code Act was enacted in 2014. It commenced 1st July 2016. It is difficult to comprehend how the framers of the Tax Appeals Tribunal Act would have envisaged that the Tax Procedure Code Act of 2014 should be of assistance in interpreting the former Act when it was passed over 5 years later. Where an Act is clear and the words are unambiguous, then one cannot use another statute to interpret it. Therefore the Tribunal holds that the 1st respondent should pay 30% of the tax in dispute as mentioned in its objection decision. The extract of the order of 7th March 2022 by the 1st respondent's lawyers gave a correct position of the law. For the said reasons, the Tribunal would have still dismissed Misc. Application 61 of 2020 but it has already been struck it off and it cannot punish the same party twice in respect of the same matter.

Having stated that the 1st respondent ought to pay 30% of the tax in dispute or that which is not in dispute, whichever is greater, the Tribunal has to ask itself whether the respondent were in contempt of the court order of 7th March 2022.

The applicant brought its application under S. 34 of the Tax Appeals Tribunal Act which deals with contempt of a tribunal. S. 34 reads:

> "Any person who-
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> (a) insults a member in, or in relation to the exercise of his or her powers or functions as a member;
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> (b) interrupts the proceedings of a tribunal;

(c) creates a disturbance, or takes part in creating a disturbance in or near a place where a tribunal is sitting; or

(d) does any other act or thing that would, if a tribunal were a court of record, constitute a contempt of that court,

commits an offence and is liable on conviction to a fine not exceeding twenty- five currency points or to imprisonment not exceeding six months or to both."

The Section mention an offence and conviction. *Black's Law Dictionary* 10th Edition p.1249 defines 'offend' as "1. To commit a crime or crimes… 2. To transgress moral law…" The *Black's Law Dictionary* (supra) p. 408 defines the word "conviction' as "1. The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. 2. The judgment (as by a jury verdict) that a person is guilty of a crime." The Tribunal is not concerned with moral law as it is not a church or mosque. A reading of S. 34 shows that it is concerned with punishment of contempt of the tribunal as a crime. The Tribunal does not have criminal jurisdiction and cannot try contempt of the Tribunal as a crime. Therefore the applicant cited and brought its application under the wrong law.

S. 98 of the Civil Procedure Act makes provision of saving of the inherent powers of Court. It reads:

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

S. 23(3) of the Tax Appeals Tribunal Act states that the Tribunal shall be conducted in accordance with such rules of practice and procedure as the tribunal may specify. In line with that Section, the Tribunal passed the Tax Appeals Tribunal (Procedure) Rules. Rule 31(1) of the Rules allow the Tribunal to use the rules of practice and procedure of the High Court which include the Civil Procedure Act. S. 98 of the Civil Procedure Code Act allows the Tribunal like any other court to handle matters that deal with abuse of court process as a civil matter. Therefore the applicant ought to have brought its application under S. 98 of the Civil Procedure Act. Citing a wrong law is a curable defect. In *Walusimbi v Nakalanzi and others* Misc. application 1784 of 2019 Justice Kaweesa stated that "I think, it is just safe to consider the wrong citation as a curable irregularity and proceed." S. 22(2) of the Tax Appeals Tribunal Act states that a proceeding before a tribunal shall be conducted with little formality and technicality as possible. Taking that into consideration the Tribunal

will treat the use of the wrong citation by the applicant as curable and proceed with the application.

In *Uganda Super League v Attorney General* Constitutional Application 73 of 2013 Justice Kiryabwire cited *Black's Law Dictionary* 7th Edition that defines contempt of court as "conduct that defies the Authority or dignity of court." He went on further to cite with approval Halsbury's Laws of England Volume 9, 4th Edition where contempt of court was classified in two categories;

> "Criminal contempt which is committed by words or acts that impede Administration of Justice and Civil contempt which arises when there is disobedience to judgment, orders or other court process and involves private jury."

The applicant brought its application by notice of motion, therefore it should be considered as a civil contempt. It did not bring its cause by a charge sheet for the tribunal to consider it as criminal contempt.

In order to determine whether the respondents were in civil contempt of court, the Tribunal has to look at the relevant extract of the order they are alleged to have defied and what constitutes contempt. Clause 2 of the order stated that the applicant will pay 30% of the tax in dispute or that tax not in dispute, whichever is greater. The said order was not appealed nor reviewed or set aside. The 1st respondent did not pay the tax in dispute or the tax not in dispute whichever is greater. The applicant contends that the 1st respondent's agents, the 2nd and 3rd respondents also did not comply with the order.

Contempt of court has been discussed in several court decisions. In *Stanbic Bank (U) Ltd and Jacobsen Uganda Power Plant Company Ltd. v The Commissioner General Uganda Revenue Authority* Misc. Application 0479 of 2019 Justice Irene Mulyagonja Kakooza stated that the general principle regarding respect of court orders was stated in *Chuck v Cremer* (1 Coop Tempt Cott 342) which was cited in the judgment of Romer, LJ in *Hadkinson v Hadkinson* as:

> "A party who knows of an order, whether null or regular or irregular, cannot be permitted to disobey it … it would be most dangerous to hold that suitors, or their solicitors, could themselves judge… they should come to the court and not take (it) upon themselves to

> determine such a question. That the course of a party knowing of an order, which was null and irregular, and who might be affect by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed."

The judge stated that Romer LJ went on to state at p. 571 that "Disregard of an order of court is a matter of sufficient gravity, whatever the order may be" The Tribunal agrees that disregard of an order should not be treated lightly by any party.

In *Jack Erasmus Nsangiranabo v Col. Kaka Bagyenda and Attorney General* Misc. Application 671 of 2019 Justice Sekana said:

> "Any course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice is contempt of court. The rationale is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed."

He stated that the public has an interest and a vital stake in the effective and orderly administration of justice. If there is going to be orderly collection of taxes and settling of tax disputes there is need to respect the rule of law. Rule of law requires that not only should institutions administering justice should be respected but also their orders. The Rule of law distinguishes between civilized people and savages. If people were to act with impunity without regard to the rule of law a state can descend into anarchy.

In *Meadow Glen Homeowners Association v City of Tshwane Metropolitan Municipal*ity (767/2013 (204) ZASCA 209 the court held that "Contempt of court is not an issue inter parties; it is an issue between the court and the party who has not complied with a mandatory order of court." He cited the *Victoria Ratepayers* case (51103) [2000] ZAECHC 19 (11 April 2003) where it was stated that contempt of court has obvious implication for the effectiveness and legitimacy of the legal system and the legal arm of government. Court of contempt is supposed to restrain and punish persons who act with impunity or disregard the court process.

In *Prof. Frederick Ssempebwa and 2 others v Attorney General* Civil Application 5 of 2019 (supra) the court stated that

> ".. the applicant must prove the requisites of contempt (the order, service or notice; non-compliance; and willfulness and mala fides) beyond reasonable doubt. But once the applicant has proved the order service, and non-compliance, the respondent bears the evidential burden in relation to willfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non- compliance was wilful and mala fide, contempt will have been established beyond a reasonable doubt."

Willfulness is defined by "Oxford Advanced Learner's Dictionary 9th Edition p. 1722 as "1… done deliberately, although the person doing it knows that it is wrong. 2. Determined to do what you want." *Black's Law Dictionary* 10th Edition p. 1100 defines mala fides as "in or with bad faith.

Having read the above decisions, the tribunal feels that the position of the law is that for contempt of court to be found, the following principles have to be established

1. The existence of a lawful order by a court whether it is regular or irregular.
2. The alleged offender had knowledge of the order.
3. The alleged offender failed to comply with the order, or disobedience of the order.
4. The act complained of was done wilfully and or with mala fides

Therefore, the Tribunal has to ask itself was each of the respondents in contempt of the court order. In respect of the 1st respondent, it is not in dispute that there was a lawful order, the alleged offender had knowledge of the order and it failed to comply with the order. The failure by the 1st respondent to pay the 30% of the tax in dispute cannot be said to be in contempt of the court order. Parties are known to have liquidity problems making it difficult to comply with court orders. The Tribunal cannot go into the mind of the 1st respondent to determine whether it acted willfully or with mala fides, however its actions show that it acted as such. Ms. Patricia Nabirye states that the 1st respondent informed the 3rd respondent not to pay the 30% of the tax in dispute. The Tribunal feels that the 1st respondent's action in informing the 3rd respondent not to pay the 30% of the tax in dispute was done willfully and in bad faith. The 1st respondent extracted the said order which clearly indicated that "the applicant will pay 30% of the tax in dispute or that tax not in dispute whichever is greater." The 1st respondent never appealed against the said order or sought to review it. It was only after the applicant had filed its application of contempt,

that the 1st respondent sought interpretation of S. 15 of the Tax Appeals Tribunal Act. In seeking an interpretation of S. 15 the 1st respondent indicated that it was not sure of what it told the 3rd respondent. The order was made on 7th March 2022. The applicant inserted the requirement to pay 30% implying that that the payment was still in dispute. So, it should not have told the 3rd respondent that it had paid the 30% when it was not sure about the interpretation of S. 15 of the Act. The evidence that it paid a greater portion of the tax was not in the 1st respondent's application for injunction nor in the main application. Courts do not operate like markets or bazaars where if one feels he has been cheated he goes out in the street and starts shouting 'I have been cheated'. This creates more commotion. An aggrieved party can still seek for review of the order and regularize any anomaly.

In respect of the 2nd respondent, it contends that it did not receive the order of 7th March 2022. The tribunal agrees with the 2nd respondent that an agency notice is not a court order. In Paragraph 4 of her affidavit, Sheila Keshubi states that "the 2nd respondent only received an Agency Notice from the applicant". However, in a letter to the Commissioner Domestic Tax, dated 25th April 2022 Shelia Keshubi, Head Legal and Company Secretary of the 2nd respondent attached to the affidavit of the applicant's witness, Stuart Aheebwa, she stated that "the bank is unable to enforce the agency notice as its operation is halted by a court order until the disposal of the main suit". One wonders how the company secretary would refer to an order which she did not receive nor read. Her letter was in contradiction of her affidavit and the order of 7th March 2022 which required the payment of 30 % of the tax in dispute. The contradictions in her statements and her averse interpretation of the order raises doubt as to whether the 2nd respondent acted in good faith. In the *Prof. Sempebwa* case (supra) it was stated that "should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non- compliance was wilful and mala fide, contempt will have been established". Having to clear the doubt, the 2nd respondent is therefore found in contempt of the court order of 7th March 2022.

The 3rd respondent had knowledge of the order of 7th March 2022. After the applicant had served the 3rd respondent a third party agency notice, the 1st respondent availed it the court order. The correspondence between the 3rd respondent and the applicant attached to her affidavit show that the former deliberately ignored the court order. Clause 2 of the

order stated that the applicant should pay 30% of the tax in dispute. The 3rd respondent deliberately or mischievously ignored the said clause. It interpreted the Order selectively as if it was the first order the bank had ever in respect of temporary injunctions. The applicant applied clause 1 and ignored clause 2 of the order. In an email of Daphne to Nskikoteba Isaac copied to others, Annexture B1 to the affidavit of Patricia Nabirye she states that the letter to URA should state that "the bank is unable to enforce the agency notice received as this would be a flagrant contempt of an order of court." This shows that the decision not to pay was willful. As to how she would construe paying 30% would be a flagrant contempt of an order of court when the order requested the applicant to pay 30% can only be an act of mala fide. This conflicts with the version of Patricia Nabirye who stated that the 3rd respondent was not sure of whether to pay because it received conflicting versions. The contradicting versions raises doubt as to whether the 3rd respondent acted in good faith. With a tongue in her cheeks, Patricia states in Paragraph 9 of her affidavit, that "the 3rd respondent is ready and willing to honour the Third-Party Agency Notice if given an unambiguous directive to do so by this honorable Tribunal." The 3rd respondent was not party to the order and the Tribunal cannot direct it. A party is required to enforce an order whether it is regular or irregular as long as it is lawful. See *Chuck v Cremer* (supra). The duty was on the 1st respondent to get a clear order restraining the applicant from effecting the agency notices. The 3rd respondent cannot use ignorance of the contents of the order to act with impunity in not enforcing it. Ms. Patricia Nabirye a legal officer of Risk and Dispute management in the 1st respondent's legal department should be aware of the risk of not complying with court orders. The customer care service of banks to their clients should not extend to interpreting court orders to delay or frustrate payments in court orders. Therefore, the third respondent is found liable for contempt of the court order of 7th March 2022.

In *Jack Erasmus Nsagiranabo v Col. Kaka Bagyenda and Attorney General* (supa) Justice Ssekana Musa stated that

> "Civil contempt is punishable by way of committal to civil prison or by way of Sequestration. It can also be punishable by way of fine or an injunction against the contemnor. See Stanbic Bank (U) Ltd. Vs Commissioner General Uganda Revenue Authority (supra).

Having found the respondents in civil contempt of the order of 7th March 2022, the Tribunal will fine them because it cannot imprison them as they are not physical persons. The applicant requested the Tribunal to fine the respondents under S. 34 of the Tax Appeals Tribunal Act. The Tribunal does not have criminal jurisdiction to impose a fine under the said Section. In *Stanbic Bank (U) Ltd and Jacobsen Uganda Power Plant Company Ltd. v The Commissioner General Uganda Revenue Authority* Misc. Application 0479 of 2019 the court fined the contemnor Shs. 100,000,000 for civil contempt. The Tribunal will impose a fine of Shs. 20,000,000 on the 1st respondent for directing the 3rd respondent not to pay the 30% in civil contempt of court. The 2nd respondent is fined Shs. 30,000,000 for deliberately ignoring to implement the court order which it denied it did not receive yet it acknowledged it in a letter. The 3rd respondent is also fined Shs. 30,000,000 for after receiving the order of 7th March 2022, refusing to honour it and deliberately misinterpreting so as to frustrate the payment of 30% of the tax in dispute. The said fines should be collected by the applicant and paid into the Consolidated Fund.

The 2nd and 3rd respondents were served with agency notices on 19th April 2022. Agency notice are provided for in the Tax Procedure Code Act. S. 31(3) of the Tax Procedure Code Act reads:

> "A person to whom a notice is served under subsection (2) shall pay the amount specified in the notice under subsection (2) by the date specified in the notice, being a date that is not before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf."

The agency notices indicated that "payment should be effected on the date of receipt of this notice." The said notices were to remain in force for 180 days from the date of receipt. The reasons given by the 2nd and 3rd respondents that they were not in contempt of the court order are not convincing. S. 29 of the Tax Procedure Code Act reads:

> "(1) Tax payable under a tax law is a debt due to the Government of Uganda and is payable to the Commissioner in the manner and at the place determined by the Commissioner.
>
> (2) The Commissioner may sue for and recover unpaid tax in a court of competent jurisdiction in Uganda"

S. 31(11) of the Tax Procedure Code Act states that

> "(11) a person who does not comply with a notice issued under this section is personally liable for the amount specified in the notice which shall be treated and collected as unpaid tax under this Act."

Deposit of 30% of tax in dispute until it is ordered to be refunded is a debt due to government. In *Uganda Revenue Authority v Meera Investments Ltd.* Civil Appeal 22 of 2007 Justice Kanyeihamba stated that government needs taxes paid expeditiously. It is for this reason that this application was handled expeditiously. Under S. 2 of the Uganda Revenue Authority Act, the applicant is an agency of the Government. The applicant was collecting the taxes on behalf of the Government of Uganda. The question is; why did the 2nd and 3rd respondent not pay the amounts in the agency notices promptly? By holding on to the 30% of the tax in dispute the 2nd and 3rd respondents were denying the government use of the taxes. Their omission to act amounted to a nonfeasance, the failure to act when a duty exists. This may result in a loss to government as it may have put the money to other use. It is entitled to damages for the failure to act by the 2nd and 3rd respondents. It is not clear why the applicant did not hold the 2nd and 3rd respondents personally liable for the 30% tax in dispute under S. 31(11) of the Tax Procedure Code Act By seeking for damages the respondent took a lenient course of action.

S. 21(6) of the Tax Appeals Tribunal Act states that "A tribunal may make an order as to damages, interest or any other remedy against any party, and the order shall be enforceable in the same manner as an order of the High Court." Court have awarded damages in misc. applications or causes bought by persons whose rights have been infringed on. In *Haj Kaala Ibrahim v the Attorney General and Commissioner General of URA* Misc. cause 23 of 2017 the court award the applicant damages of Shs. 20,000,000 for revocation of its licence and abrupt change of policy to its detriment. S. 22(1) of the Tax Appeals Tribunal Act provides that the procedure of the Tribunal is within its discretions. S. 22(2) of the Act states that the tribunal may inform itself of any matter is such a manners as it thinks appropriate. This is one matter the Tribunal should award general damages.

The applicant did not provide evidence of the damages it sought. The 2nd and 3rd respondents were served notices on the 19th April 2022. It is assumed that they have held

onto the monies till the filing of the above applications on 29th April 2022. The time during which the Tribunal is listening to the application is excluded. The Tribunal notes that the 2nd and 3rd respondents are bankers which charge usually at an interest of 24% pa. On an agency notice seeking to recover Shs. 4,257,549,600, the banks would have charged Shs. 28,071,755.6 for 10 days. If the same yardstick is used on them, the Tribunal will order the 2nd and 3rd respondents, to pay Shs. 28,071,755 jointly.

Therefore taking the all the above into consideration the Tribunal orders

1. Misc. Application 61 of 2022 is struck off with costs.
2. The 1st respondent is ordered to pay Shs. 20,000,000 as fine for civil contempt.
3. The 2nd respondent is ordered to pay Shs. 30,000,000 as fine for civil contempt.
4. The 3rd respondent is ordered to pay Shs. 30,000,000 as fine for civil contempt.
5. Both 2nd and 3rd respondent are ordered to pay jointly Shs. 28,071,755 as general damages.
6. Interest of 2% pa is awarded on the above from the date of this ruling till payment in full.
7. Costs of Application 58 of 2022 are to be borne by the respondents.

We so order.

Dated at Kampala this day of 2022.

_____	_____	_____
DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**